

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ALAIN CRIVELLI, REMY KEROUANTON and YANN KEROUANTON

Appeal No. 2002-1993
Application No. 09/336,648

ON BRIEF

Before COHEN, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-16, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a device for selectively positioning one of a plurality of posters behind a display window. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Sawyer	889,814	Jun. 2, 1908
Ahlstrom	1,149,317	Aug. 10, 1915
Slotsky	1,749,784	Mar. 11, 1930
Bailey	4,176,483	Dec. 4, 1979
Stadjuhar et al. (Stadjuhar)	4,680,883	Jul. 21, 1987
Trame et al. (Trame)	5,003,717	Apr. 2, 1991
Simson et al. (Simson)	5,410,330	Apr. 25, 1995
Hornung	5,597,994	Jan. 28, 1997
Bolton	16,830	Nov. 7, 1907
(British patent specification)		

The following rejections are before us for review.

Claims 1, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar and Hornung.

Claims 2-6 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar, Hornung and Bolton.

Claims 7 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar, Hornung, Bolton and Trame.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar, Hornung, Bolton, Trame and Ahlstrom.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar, Hornung and Slotsky.

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar, Hornung and Bailey.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sawyer in view of Stadjuhar and Simson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 15) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 14) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. For the reasons which follow, we cannot sustain the examiner's rejections.

Sawyer, the jumping off point of the examiner's obviousness rejections, discloses an advertising apparatus for exhibiting a series of advertisements automatically in succession within the same space. The apparatus comprises a plurality of curtains B¹,

B², etc. each wound about a separate roller A¹, A², etc. Each roller is positively rotated in both directions, with the revolution of successive rollers being so coordinated that while one curtain is being wound up the next succeeding curtain is lowered and so on throughout the series in any predetermined order (page 1, lines 104-110). This coordination is effected by rotation of a cam shaft G having cams thereon for moving levers F¹, F², etc. on a frame F*, the levers being attached to corresponding tapes e wound about respective ones of the rollers such that movement of each of the levers by rotation of the cam shaft in turn causes rotation of the roller about which the tape attached to the lever being moved is wound, thereby also raising or lowering the curtain wound about the roller.

Sawyer uses a single motor to successively rotate all of the rollers about which the curtains are wound and thus lacks a set of motors, each motor of the set being associated with a respective one of the receiver drums as called for in each of appellants' independent claims 1 and 14-16. Thus, each of the examiner's rejections rests in part on the examiner's determination that "[i]t would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the advertising apparatus [of Sawyer] to have separate motors in view of Stadjuhar et al. in order to provide a means of being able to operate at least some of the posters if a motor should fail" (answer, page 4 and pages 7-8).

Stadjuhar discloses a sign system comprising a plurality of modules 12 arranged side-by-side, each module having a front face 30 behind which a flexible message web is wound about rollers 32, 34. The message web 36 is constructed of a flexible plastic material that forms an opaque background 41 for a series of translucent messages 43. An exposed portion 42 of the web extends between rollers 32, 34 along the front face 30 with the exposed portion 42 thus carrying a selectively changeable message for display through the front face 30. The message web 36 is reversibly advanced by rotation of the rollers 32, 34. Each of the rollers is driven by a motor 52. As discussed in column 5, lines 11-32, an electronic control 86 operates the drive motor in an intermittent manner to display a selected message at the view area.

Like Sawyer, Stadjuhar discloses the use of a single motor to move messages into and out of position to be displayed through a display area or window. While the messages of Sawyer's device are carried on a plurality of separately wound curtains, the plurality of messages of each of Stadjuhar's modules are carried on a single message web. In both the Sawyer and Stadjuhar devices, the motor must successively move a series of messages into and out of alignment with the viewing area in order to position the desired message within the viewing area. We agree with appellants (brief, page 8) that

[i]ntroducing the teachings of Stadjuhar into Sawyer would have objectively consisted in multiplying the mechanism of Sawyer in a side-by-side [manner] in order to obtain a full message constituted by a plurality of side-by-side

independently chosen posters. But here also, each window would indeed have comprised its own motor as in Sawyer or Stadjuhar. Thus, in no way could a combination of these two references lead to a unique window with a plurality of independent motors for this same window.

Stated differently, Stadjuhar would not have suggested modification of the Sawyer device to provide a separate motor for each of the rollers as proposed by the examiner to arrive at appellants' claimed invention, namely a device having a display window and a set of receiver drums on which posters are at least partially wound, wherein the posters in the operative position registered with the window lie in planes which are parallel, spaced apart and which substantially register with one another and a set of motors, each motor being associated with one of the receiver drums. We find in Stadjuhar no teaching or suggestion of providing a plurality of motors so as to enable operation of at least some of the posters if a motor should fail. The examiner's stated motivation for the modification of Sawyer thus appears to stem from impermissible hindsight.¹

We have reviewed the teachings of the additional references relied upon by the examiner in rejecting the claims but find nothing therein which overcomes the above-

¹ Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967).

noted deficiency of the combination of Sawyer and Stadjuhar. We therefore shall not sustain any of the examiner's rejections.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-16 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

IRWIN CHARLES COHEN
Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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